

## SUMMARY OF RESPONSE

### *Priority*

1. The Examiner states: "Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

This application does not repeat a substantial portion of prior Application No. 09/829801, filed 4/10/01. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78."

### *Information Disclosure Statement*

2. The Examiner states: "The mentioning of references in the specification (page 6/27) is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered."

### *Drawings*

3. The Examiner states: "The drawings are objected to because there are several problems with the depiction of the lid, Figs. 6-8: 608 not shown in Fig. 8; what is '804', which does not appear in Figs. 6,7); 606 in Fig. 6 is not the same as in Fig. 8; etc. Consequently, the drawing changes of 9/9/05 are not acceptable. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as amended.' If a drawing figure is to be canceled, the

appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance."

#### ***Claim Rejections - 35 USC § 112***

4. The Examiner states: "Claims 3-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The attachment of lid sections has not been adequately disclosed. See the discussion of the drawings, above. The L-shaped brackets and their location, purpose, etc., is not adequately disclosed.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of the claims is not clear. In claim 1, it is not clear if the opening and closing system is being recited in combination with the swimming pool and the lid and compartment. Initially, the "system" is recited "for" the "lid of a compartment disposed underwater in a swimming pool".

However, the power pack is said to be in a "remote position" in relation to the pool, and the linkage is "extending" between the drive and the lid and compartment, both of which suggests that the combination of the lid, compartment and pool are being recited. These claims have been

examined as if the combination is being recited.

The same is true of claim 2. Also, paragraph b) of claim 1 is not understood as it appears to be grammatically incorrect.”

### ***Claim Rejections - 35 USC § 102***

5. The Examiner states: “Claims 4 and 5 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Conterno.

The panels have lips 15,16, defining an inverted pan, coupling mechanism 13, and torsion structural members and buoyancy “tanks” between walls 14. The term “pivoting edge” establishes no structure that requires pivoting. Only a structural “pan” has been claimed, to which a hinge could be attached. Conterno meets the structure of the recited “pan”..”

### ***Allowable Subject Matter***

6. The Examiner states: “Claims 1-3 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.”

### ***Response To Arguments***

7. The Examiner states: “Applicant’s arguments have been fully considered but they are not persuasive.

Applicant has not addressed the 112 rejections.

Drawing objections still exist.

The listing of prior art in the specification is not a proper IDS, as discussed above. A form 1449 must be submitted to ensure consideration of these references.

The priority claim is still not in conformance with PTO requirements. Please carefully note the objection above.

Regarding the art rejection, see the above comments concerning the interpretation of Conterno.”

***Conclusion***

8. The Examiner states: “This Action is made Final.”

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## PRIORITY

1. Applicant points out that the claim of priority based on U.S. Serial No. 09/829,801 filed April 10, 2001, specifically identifies and incorporates the entire priority document therein by reference into the present Application. Applicant submits that the reference and incorporating language renders the claim sufficient and adequate (see Page 2, Line 1 of Specification).
2. In the event further specific language is to be added to the specification of the present Application, Applicant hereby requests specific authorization of the Examiner to make such amendment to avoid rejection based upon the introduction of new matter to the specification. Applicant will have no objection to amendment of the present Application by addition of descriptive language from the subject priority document.

## INFORMATION DISCLOSURE STATEMENT

Applicant submits that an INFORMATION DISCLOSURE STATEMENT and INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Substitute for Form 1449PTO) was mailed by first class mail in this case on September 7, 2005 and filed on September 9, 2005.

Applicant notes that on 09-09-2005 there is an item entitled "Reference capture on IDS" on the PAIR system (see copy attached).

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## DRAWINGS

Applicant submits SECOND REPLACEMENT SHEET(s) 9/10 and 10/10 herewith.

Applicant submits the amendments to the DRAWINGS render the Application allowable.

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